IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR. JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 23806 OF 2006

Between:

M/s. Sivananda Enterprises,
Machilipatnam, Krishna District,
Rep. by its Proprietrix Smt. K.Rajya Lakshmi

Petitioner

AND

The Joint Commissioner of Commercial Taxes (Legal),
O/o: The Commissioner of Commercial Taxes,
Commercial Tax Building, MG Road, Nampally,
Hyderabad and two others

Respondents

Dated: 17th November, 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is a proprietary concern carrying on business of distribution of soft drinks and is a registered dealer on the rolls of the third respondent both under the

Andhra Pradesh Value Added Tax Act and the Central Sales Tax Act. For the assessment year 2005-2006, the liability of the petitioner under the VAT Act came to be determined by the third respondent by his order dated 28.06.2006. Aggrieved by the same, the petitioner carried the matter in appeal before the Second Respondent herein. Along with the appeal, the petitioner also filed an application seeking stay of recovery of the disputed tax. The said application was rejected by the second respondent by his order dated 30.08.2006. Aggrieved by the same, the petitioner carried the matter in revision before the first respondent unsuccessfully. Hence, the present writ petition is filed with the following prayer:

> "…For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of Mandamus declaring that the action of the first respondent i.e. the Joint Commissioner (CT) (Legal) rejecting the stay petition filed by the petitioner without verifying and going through the grounds raised by the petitioner in the stay application as illegal, improper, unjust, without application of mind, contrary to the provisions of the APVAT Act as the petitioner is only taxable at the rate of 4% on the lease rentals towards the crates supplied by the manufacturer taxable under Section 4(8) read with Entry-90 of the IVth schedule as also in direct conflict with the judgment of this Hon'ble court reported in 41 APSTJ 99 and also to declare the levy of tax interest simultaneously in a composite order as illegal and contrary to

> the law laid down by this Hon'ble Court reported in 147 STC 462 and consequently to stay all further proceedings arising out of the impugned order and pass such other order or orders as are deemed to be fit and proper in the circumstances of the case…"

Heard the learned Government Pleader.

In the circumstances, we are of the opinion that this writ petition can be dispose at the stage of admission, by directing the respondents not to take any coercive steps for recovery of the disputed tax, on the condition of the petitioner depositing 50% of the disputed tax within six weeks from today. The amount, if any, already paid towards the disputed tax, shall be given credit to, while computing the said 50% of the amount.

The writ petition is accordingly disposed of. No order as to costs.

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J.Chelameswar, J.

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D.Appa Rao, J.

November 17, 2006
MAS.